

CARMEN LUCAS

22 April 2010

Larry Myers
Native American Heritage Commission
915 Capital Mall, Room 364
Sacramento, Ca. 95814

Subject: Padre Dam Municipal Water District Ridge Hill Road Facilities

Reference: (a) April 6, 2010, NAHHC Meeting at Sacramento, California your request of me to provide you a time line.
(b) Best Best & Krieger ("BBK") Attorneys at Law letter addressed to you dated April 5, 2010
(c) My letter to Don Laylander and Linda Ayjar, ASMAffiliates, dated September 2007.

Enclosure (1) Copy of reference (c) above.
(2) Draft map Padre Dam EISA Secondary Connection (Confidential Exempted from Public Records Act).

Dear Larry:

This letter is being sent to you in an effort to correct reference (b) as it relates to this Native American Monitor's participation in the subject project. Additionally at the meeting of April 6, 2010, you had asked that I provide you with a "time line" and a copy of my compilation record of "Sacrifice Areas". Both of these are attached; however the Sacrifice Areas compilations should not be public record.

Page 72 of reference (b) third paragraph under heading CULTURAL RESOURCES SURVEY AND INITIAL STUDY, states the following:

The EDAW survey of the site did identify a Native American prehistoric bedrock milling feature in granite rock. On June 29, 2007, representatives of the District, Al Lau and Mary Lindquist, met with EDAW and Black & Veatch, the engineering consultant overseeing design, at the site to examine the milling features. On this same day, the District met with Carmen Lucas,

for the first time. As a result of the Native American prehistoric bedrock milling feature identified in the findings of LDAWS Cultural resources Survey, the California Register of Historic Resources ("CRHR") designated the Project Site as a historical resource, identified as CA-SDI-18472. Due to the possible Native American cultural resources at the Site, the District retained Native American monitors Carmen Lucas and Clint Linton to ensure any cultural resources uncovered at the site were treated appropriately.

COMMENT

My memory tells me that the above paragraph is somewhat misleading. To the best of my memory I was not at the Padre Dam Ridge Hill Road facilities anytime prior to 17 September 2007. Additionally, Padre Dam ("the District"), may have reimbursed ASM for my services as Native American Monitor, however, I was asked by Linda Akjuz the pre history Archeologist of the project to be the Native American Monitor. See Enclosure (1). All pay checks received by me for that service were issued by ASM affiliates. I have no history of Padre Dam District retaining or compensating for my services as Native American Monitor.

On 17 September 2007, my understanding was that Padre Dam Ridge Hill Road was identified archeologically as DS-S-1 (pre-History). Additionally, I understood that there was a Historical component to the Padre Dam Ridge Hill Road project that consisted of a Historic rock wall, and remnants of an old ranch house with some evidence of historical agricultural activities that were still evident during my entire participation as Native American Monitor. That Historical Archeological component was identified as DS-S-2H. The Historical Archeological (DS-S-2H), testing had taken place prior to my participation as Native American Monitor. That testing was overseen by the Archeologist in charge Don Laylander and to my knowledge, had no Native Monitors for some reason I do not know. The Historical component (DS-S-2H) had been located to the south end of the property starting at the rock wall. The ground visibility was not good due to the grass cover however, I did walk the area a number of times during my tenure, and did not locate any prehistory deposits at DS-S-2H. It is my understanding that after the testing of the pre-history site DS-S-1, that the archeological location was then assigned the identification number of CA-SDI-18472 by the South Coastal Information Center ("SCIC").

My memory of when I met representatives of the District, Al Lau and Mary Lindquist was on 17 September 2007, (not June 29, 2007 the inference from the "BBK" letter) while I was the Native American Monitor for that day. I was provided a "Look-see" of the draft Padre Dam Archaeological Site Boundary and Project Elements map at which time I asked and received permission to photograph that draft. See enclosure (2). As can be seen in enclosure (2), it was clear to me that the project design did call for the complete destruction of the Bed Rock Milling Feature. At that time I voiced my concern and disapproval to Al Lau, Mary Lindquist, Don Laylander and Linda Akue. See Enclosure (1).

CONSIDERATION OF PROJECT ALTERNATIVES.

Page 92, first paragraph of reference (b) states:

In February of 2008, the final Archaeological Report for the Project was released. (Exhibit M – Archaeological Report dated February 2008) The Archaeological Report notes that pottery shards, tools and bone fragments were found, but no bones were positively identified as human remains. (Id.) Ecofact Assemblage showed that 266 pieces of animal bone were recovered and states:

"The fact that several small fragments of bone were burned raised concerns that they might be cremated human bone. Mark Becker made the preliminary assessment of the bone, and Rose Tyson, Curator of Physical Anthropology at the San Diego Museum of Man, made definitive identifications. All except one specimen could be identified as non-human. The single exception was a small fragment of burned bone that Tyson assessed as probably non-human, but it could not be certainly identified."

COMMENT:

It should be noted that Mark Becker, is a PhD., Senior Archaeologist for ASM affiliates who specializes in Lithic Analysis, not bone analyses.

The CRM practice of collecting all bone in the field and waiting for some "lab person" to identify suspicious bone is unacceptable as that allows every Tom, Dick and Mary Jane to act as the expert and handle human remains. Often such bones are put in a little plastic bag and sent off to the San Diego Archeological Center never to be identified because the project ran out of money. All suspicious bone should be under the control and charge of the Native American Monitor. Only those qualified under the authority of the Coroner should provide identification as soon as possible while in the field.

Unfortunately, I do not have a copy of that report, none the less my letter (enclosure 1) and Clint Linton of Red Tail Monitoring letter dated September 29, 2008 (as referenced on page 42 of reference (b)) should be a part of that report. Linda Akyus the Archeologist for the prehistory testing did advise me that she had recommended "Site Avoidance".

Note: on January 2009, I received a phone call from Linda Akyus (No longer an employee of ASM), who did the Archeological testing, she had heard that ASM was doing data recovery at Padre Dam, and wanted me to know that she feels disheartened and bad that that has happened.

BBK Paragraph 2 of page 92 of reference (b) states:

At a meeting on March 4, 2008, attended by Mary Lindquist, John Cook, Carmen Lucas, Al Lau and Neal Brown, Carmen Lucas suggested a Prayer for Forgiveness by Indian Nation - Kumeyaay nation - Heritage Commission - Viejas or KCRC and requested forensic dogs be used to examine the site. She suggested that if there were alerts, then the Repatriation Committee would be contacted for possible removal.

COMMENT:

"... That the Repatriation Committee be contacted for possible removal", is an absurd and an inaccurate statement.

I explained to those in attendance at the March 4, 2008 meeting, that should Padre Dam chose to exploit the site, that they may very well uncover Human remains, and that the Law had to be followed; Call the Coroner who identifies as to whether or not the bones are in fact Human and if they are Native American Bones, the Coroner then notifies NAHC, who in turn identifies the Most Likely Descendant (MLD). I explained that in my experience in most cases in San Diego has been that the Kumeyaay Cultural Repatriation Committee ("KCRC") is most often identified as the MLD. I explained that the KCRC is made up of a representative from most of the bands of Indians with in San Diego County who are concerned with Repatriation; additionally that committee normally asks that the bones be turned over to the KCRC and that they (the KCRC) will and does reenter inadvertent discovered Human Remains discovered during construction projects.

My memory of the above described meeting is as follows:

JR. Cook owner of ASM had called and asked if I would meet with him and the Padre Dam Engineers and staff of Padre Dam District at the Padre Dam Office in Santee, to discuss the Archeological/Prehistory of the Padre Dam project that I had monitored in September of 2007. I agreed and did meet JR in the Padre Dam Parking lot and together we went into the building and met in the conference room with the Engineers and staff of Padre Dam District. At that meeting, I stated I do not talk for the Indian Community, nor do I speak for anyone other than myself.

I spoke to the Engineers and staff of Padre Dam District, that the site should be avoided and explained what I understand the site to represent to me as an Indian of San Diego. Being that the site was rich in midden soils, it had an unusually high amount of pot shards on the surface, that the milling feature was unusual as well in that it was so large and had a variety of elements that made it somewhat unique as a milling feature such as slicks, basins, a fracture across its width that was slick from the continued use. I explained at length the old Karuk way of burials, the fact that so much pot shards are evidence of sacrifice areas and as such there very well could be some human remains and "Lingering Spirits" (Those old souls who chose to be earth bound). I advised the Engineers and Staff and JR that all those things was a red flag to me and recommended that the site be avoided and that alternatives be searched out.

I also recommended that should the project go forward that;

1. Padre Dam / ASM should bring in the forensic Dogs that have been trained to locate 5,000 year or more pre history human remains. If the dogs alert, the area should be avoided.
2. Water screening of all soils and hand excavation of that area a must be done.
3. I can not help what this Society does and that it is always my practice to ask a quiet prayer asking the old ones to forgive those people who disturb their final resting place.
4. Native American monitors who know their heritage and what they are looking at must be a part of the project.
5. That Padre Dam does some thing to save the milling feature and create a monument that tells of the desecration that takes place so this Society can have water pumped to them. I explained that I was aware that such features can be broken apart with a degree of control. Mr. Lau did not think so, but he did say that he would research such a possibility.
6. That Padre Dam needs to take the project to the KCRC, that the Indian Community has a right to know that their sacred places and burial grounds are being destroyed in the name of progress.

7. A number of times I reiterated that I do not talk for KCRC, the Indian community at large or for anyone but my self.

BBK Page 92, 3rd Paragraph states:

On March 28, 2008, EDAW conducted a survey using forensic canines to determine if any human remains were present on the site. The canines were able to identify the "Potential" presence of remains, but no actual remains were found. (Exhibit N - Mitigated Negative Declaration, p. 48.) Accordingly, on EDAW's recommendation, the Mitigated Negative Declaration for the Project expressly considered the potential of finding human remains on the Project Site and included mitigation measures in the event human remains were recovered. (Exhibit N - Mitigated Negative Declaration, p.4r5)

NOTE:

The Institute for Canine Forensics is a non-profit organization in Northern California for the advancement of research and education of Forensic Evidence and Human Remains Detection Dog teams. HRD Dogs are taught to discriminate between human and non-human items, alerting on the faint residual scent of human tissue or bone, as well as dried blood. The Historical Human Remains Detection Dogs are trained with emphasis on old bones, historical graves, and teeth and buried bodies.

COMMENT:

I have no knowledge of EDAW conducting a forensic canine survey. I do have memory of being called by ASM (possibly, February 2008) on short notice that they were going to conduct a survey with the forensic dogs and asked that I monitor. Unfortunately I had to decline as I was already committed to a project in the desert the day the forensic dogs were to be available. None-the-less it is my understanding and memory that Brandon Linton, Indian from Mesa Grande and of Red Tail Monitoring, was present during the forensic canine survey. The conversation that I had with Brandon advised that the grass was thick and up to his waist which made it difficult for the dogs, non-the-less the dogs did show some interest at the north end of the milling feature. (It should be noted that when data recovery took place in 2009, Micah Hale and Brad the Archeological Crew Chief both advised me that the data recovery units were placed where the forensic dogs showed an interest).

The sentence in the above paragraph is interesting as it states "The canines were able to identify the "potential" presence of remains, but no actual remains were found".

QUESTION

If EDAW conducted a Forensic Canine Survey, and the dogs identified the "Potential" presence of remains, but no actual remains were found", are we left to understand that ground testing was conducted in those "potential" areas of interest by EDAW in 2008?

Moreover, the BBK document seems to misunderstand the purpose and nature of the forensic dogs. HRD Dogs do not disturb the ground by digging or retrieving evidence and do not cause damage to property. The dogs usually work slowly and methodically. Their most common alerts are passive, sitting or lying down when Historical Human Remains are found. At that time the HRD dogs make eye contact with their handler and do not move until the handler tells them to. When the dogs alert it is an indication of remains. The dogs are not supposed to dig up the dirt or reveal actual human remains. As far as I am concerned, the dogs did their job, and put the district on notice that this was another piece of evidence to an ancestral burial ground.

My records reflect that the Data Recovery phase of this project commenced about the 21 January 2009. My personal record reflects that I tried without success to contact Dr. Mayes at San Diego State University to have her I.D. some bone fragments from this project. Additionally, I tried to contact Clint Linton for the same issue and did not get a phone call in return.

On January 29, 2009, I requested to meet with JR Cook and Micah Hale at the ASM office in Carlsbad. I asked JR to explain to me how to feel better about this project. I have asked some questions and I am not getting any answers. Do the Indians know why when all of EDAW, ASM, Clint Linton and I, said to avoid, we are not? When I met with JR and Padre Dam District, Staff and Engineers some months prior (2008?), and explained the existence of this place, I left with the understanding that the Padre Dam were going to look again at the design. They had said that they appreciated the issues and would respect the site. I had inquired to Dr. Hector formerly of ASM as to what the status was on Padre Dam she advised that she had not heard anything. January 2009, I received a phone call from Micah Hale, asking me to be the Native Monitor at Padre Dam, his words to me were "It's going to be a daze".

On or about January 27, I received call from Clint, he is "swamped", can't come out to site and still no word from Dr. Mayes.

On or about February 2, 2009, received a call from Clint both he and Dr. Mages are swamped. Clint came out to the site at 2:00 P.M, he looked at all the bone but nothing concerned him.

On or about February 3, 2009, I attended the KCRC meeting and passed my record of the project around and advised the KCRC that they need to pay attention to this project as too much pottery, and signs lead me to believe that Human Remains are here and/or it is a Sacrifice area.

On or about February 6, 2009, I, Clint Linton Native Monitor Red Tail Monitoring, Micah and Brad met with Dr. Madeleine J. Hinkes, Professor of Anthropology/ Archaeology at San Diego Mesa College, and the representative of the San Diego Coroner Office. Dr. Hinkes, came to the site and studied the bone that I had had set aside for ID. Dr. Hinkes did identify some of the bones as human. She asked to see the site and agreed that further suspicious bone could be taken to her office for ID. It should be noted that through out this project period each once a week or two, I and Brad, the on the ground Archeologist carried suspicious bone to Dr. Hinkes office for her to ID. Over a period of two months Dr. Hinkes identified fragmented human remains to include, Cranium, skull, long bones, neck, of adults, a adolescence, hip and neck vertebra, the heel of a baby that was still in the womb of its mother when she was cremated. Bones were cremation and un-burnt (inhumation).

On or about February 10, 2009, Micah advised me that NAMC Dave Singleton named KCRC as MLD and that Bernice Pipa, Secretary to KCRC, committed to a possible site visit with PADRE Dam Officials and JR of ASM and Clint. The Data Recovery program came to a stop until KCRC expressed what they wanted.

On or about February 13, 2009 Bernice Pipa and another person met on site with JR Cook, Micah Hale and Padre Dam staff. Ms. Pipa agreed to keep grave goods and suspicious bone and identified fragmented Human remains on site in a locked storage container until work on the project was completed. Ms. Pipa also noted that she was aware of this site location as she had been told of it when her mother died. Ms. Pipa agreed that Carmen Lucas Native Monitor should identify and set aside from all future spoils any of the artifacts that may be grave goods. (I set aside Pipe fragments, Broken Monos, Broken Metate, etched and incised pot shards and the like). Clint Linton Native Monitor and Indian of Santa Ysabel and owner of Red Tail Monitoring was to act on behalf of the KCRC. (Collect grave goods and Human Remains). It should be noted that when Clint called ASM and asked for all the Grave goods to include potshards and Human Remains. JR yelled through the phone for Clint to "go F _ _ _ him self, they (KCRC) were not getting

them all". I understand that ASM has stated that now all the pottery has been returned to KCRC).

On or about March 2009, the data recovery concluded and the lab work began. I worked at the ASM office lab and helped sort artifacts. During this period I met with Micah and JR twice and again advised that the site is a Burial Ground, Sacrifice area and should not be developed. Micah called NAHC and talked to Dave Singleton, Dave Singleton and I talked on the phone a number of times. It has been my understanding that Dave Singleton talked to Padre Dam District, ASM, KCRC a number of times about the site being a burial ground and should not be developed. I provided Micah Hale and JR Cook, a copy of the state burials law (PRC section 5097.98) as amended in 2006 which states recognition of human remains "in any state of decomposition or skeletal completeness"; it doesn't matter if the remains are "intact" or not.

On or about 28 August 2009, I received a phone call from Ms. Pipa asking that I meet with her at the Padre Dam project site. The only other Indians who were there was Ms. Pipa, and Virginia Christman of Viejas and her assistant Riana. A Padre Dam engineer and an artist who was going to reconstruct the milling feature arrived and wanted to talk about saving the Bedrock. I asked why, has the issue of the Burial Ground been resolved? The Engineer got on the phone, the Artist asked a lot of questions about the burial practices of the Kumeyaay. The Engineer finished his phone conversation he and the artist left the area with no further discussion about the bed rock.

On or about 3 September Padre Dam District officials with ASM Micah Hale and JR Cook attended the KCRC meeting and presented the Padre Ridge Hill project and the issue of water stating that perhaps Viejas and Sequan would ultimately benefit from the pump station. Micah Hale made a presentation about the data recovery and Human Remains stating that there were "14 fragmented bones that had been I.D. as Human and that those were turned over to Clint Linton". I called Micah out for not referring to the area as a Burial Ground as that is what it is and the Kumeyaay have a right to know that. I advised ASM and Padre Dam that Clint Linton has told me not to ask him or his people to fill in for me as Native American Monitor because they would not work at a project that destroys a burial area. Additionally, I advised that it is one thing to monitor the inadvertent discovery of human remains; it is quite another thing to monitor knowing that Human remains are present. If I were to do that my presence would condone that practice, and I do not condone the practice of digging up burial grounds and our ancestors.

Jessie Pinto, Indian from Jamul, expressed that if it is a burial ground or sacred area that they should at least go there and sing a song and say prayer.

AGREEMENT WITH MLD AS TO MITIGATION MEASURES

3rd Paragraph states the following:

On November 12, 2009, with the district's permission, KCRC conducted an on site ceremony paying tribute to the Kumeyaay ancestors. (Exhibit U – email dated November 9, 2009.) As requested by KCRC, a second forensic dog survey was conducted on the Project Site on November 3, 2009. The canine search was conducted after the grass on the site was cut, and the same two areas were “alerted” as in the previous canine survey. (District's Agreement with KCRC (Exhibit T – Letter to KCRC dated November 12, 2009.) The only bone found by the second survey, however, was determined to be non-human. (Id.)

COMMENT:

It should be noted that the second forensic dog survey was conducted by one U.S. Customs and Border Protection agent Roy J. Lopez, Senior Patrol Agent, canine instructor BORSTAR, U.S. Department of Homeland Security, 7020 Cumann Street, Suite #2, San Diego, California 92154. I was asked to witness this Canine survey and was surprised to see that the Border Patrol dog, not the Forensic dogs trained to locate 3,000 year old human remains was used. I talked to Mr. Lopez and asked about the training that his canine receives; it does not include sources for ancestral remains. I provided Mr. Lopez with information about the Institute for Canine Forensics in Woodside, California. It is interesting to note that in spite of the fact that the Border field dog had not been trained to locate pre history remains it did show an interest in two of the same areas that the Forensic Canines had shown two years earlier and where fragmented human remains were recovered, during Data Recovery. Additionally the only bone found by the second survey was handed to me by Mr. Lopez; I recognized the bone to be a cow or horse bone that was white from age and possible exposure to the sun. Mr. Lopez did not say if the dog had uncovered it or if he himself had located it on the surface.

4th Paragraph on page 122 states:

... The District also agreed to continue data recovery at the Project Site, to excavate the areas of interest indicated by the forensic dog analysis and to

repatriate the soils to the KCRC. Accordingly, ASM was contracted and instructed to repatriate all artifacts found on the Project to KCRC.

QUESTION:

Was this a new and separate contract between ASM and Padre Dam District and if so, did ASM excavate the areas of interest indicated by the forensic dog (Border Patrol Dog, interest in November 2009) by hand and do a 100% water screening of that soil and was that soil and all the artifacts repatriated to the KCRC? My concerns about whether soil from the site has previously or in conjunction with the project, been exported has never been answered. If paragraph 5 on BBK page 122 is correct then it appears that that did not happen as paragraph 5 states: On November 18, 2009 the District authorized NAHC monitoring for the earth movement construction phase and has continued to work closely with Native American monitors throughout the construction process.

QUESTION:

NAHC: does this mean Native American Heritage Commission?

COMMENT:

"Excavate the areas of interest indicated by the forensic dog..." implies data recovery to me, and ... "Monitoring for the earth movement construction phase" ... sounds like out and out Construction and as such I understand this to represent two different components of the project. This is somewhat confusing as the last paragraph on BBK page 122 and the 1st paragraph on page 132 states:

"...the project moved forward to the construction phase in December 2009. Howard Cuero was to serve as the Native American monitor on site to observe all construction activities..."

Page 182 of Reference (b)

7. The staff report Makes Numerous Erroneous Assertions Regarding Mitigation Measures on the Project

The Staff Report implies that during the Cultural Resources Survey EDAW recommended that the site was inmitigable and that the site should be avoided, referencing on attached September 2007 letter from Carmen

Lucas (Staff report p.2). Carmen Lucas allegedly was told by "a Senior Archaeologist at EDAW" that EDAW recommended avoidance, and that the site extended beyond the APE and into the trailer park. (Staff report p.2). This conversation is noted in Ms. Lucas' letter, dated September 27, 2009 to ASM where it is clear that Ms. Lucas is referencing a conversation with Rebecca Apple. (Exhibit DD - Letter dated September 29, 2008.) In an email dated October 13, 2007, Ms Apple denied ever telling Ms. Lucas that the impacts to the site would be inmitigable, that the site should not be tested, or that it was known to extend farther east. (Exhibit EE - E-Mail dated October 14, 2007)

COMMENT

ALLEGEDLY = to declare or assert to be true, use with out offering proof.

To cite as a plea or excuse.

(Attached September 2007 above is Encl (1) to this letter).

Enclosure (1) Page 2, 2nd Paragraph

As Don and I discussed, how the testing would proceed, I asked who the landowner was and what is the development plan for the land? I was advised that Padre Dan owns the land and that it is planed to build a pump Station and Reservoir on the property. I was also advised that EDAW had conducted the ground Survey. When I asked to see the results of that Survey, I was advised that it was not available as of yet.

Don and I walked to the area that I had requested an STP to be placed; Don showed me the draft map of the proposed plan. Needless to say my concern was immediate when I saw that the pipe trenching is to be placed right on top were the long bedrock feature is. (See enclosure 1) My first inquiry was, has anyone discussed a possible redesign and if not then a discussion with the engineers of possible redesign is in order. From behind me, I heard Don say, "We can not save all the bedrock milling feature".

I inquired again about the results of the EDAW survey and I was advised by Don that ASM was working with a Sub-Contractor, who was trying to locate the EDAW report. At this time I advised Don that I planned to call Rebecca Apple at EDAW and ask her for a copy of the EDAW survey results. During the noon hour I did reach Rebecca Apple, who advised me that EDAW did conduct a ground survey of DS-S-1, and

that ground visibility was difficult however EDAW concluded that the site did indeed go over to and under the road on the east and most likely did continue in to the trailer park area. Rebecca promised that she would locate a copy of that report and send me a copy. I advised both Linda (on Site) and Don (by Phone) of my conversation with Rebecca Apple.

Page 4 1st paragraph: Enclosure (1)

A few days later, I received a phone message from Rebecca Apple of EDAW who advised me that EDAW had not completed the survey report for this project, and could not send me a copy at this time. However, Ms. Apple went on to advise me that EDAW had met with the client and advised them that the side (site) went east to include the trailer park, and advised the Client that Avoidance is the appropriate action. The client thanked EDAW and advised that they would hire someone else to do the testing. EDAW has since contacted the Client and advised that EDAW does need to furnish them with a written report.

COMMENT:

I never received the EDAW report. 'IMMITIGABLE' is a word that I have never used. Up until the Native American Heritage Commission Hearing on April 6, 2010, I have been unaware of (Exhibit EE-E-Mail dated October 14, 2007) which states:

From: Don Laylander [dlaylandre@jps.net]
Sent: Sunday, October 14, 2007 7:58 AM
To: John Cook
Subject: FYI Padre Dam MWD
HJR.

I had a chance to talk with Rebecca Apple and Jamie Cleland at the Three Corners Conference. Rebecca says that she has submitted EDAW's survey report to their prime consultant this past week. She denies that she ever indicated to Carmen that the impacts to the prehistoric site would be unmitigatable, that the site shouldn't be tested, or that it was known to extend farther east than shown on the EDAW map.

Don

COMMENT

"UNMITIGATABLE" is a word I never use.

NOTE: After learning of the above E-Mail, (on 6 April 2010), I called Rebecca Apple and asked if she would have lunch with me. She offered to come half way and we met at Janet's Café in Alpine on April 19, 2010.

I asked Rebecca Apple if she recalled the phone call I made to her a few years back in reference to the Padre Dam Ridge Hill Road project. Rebecca was quiet for a few moments then answered, her recollection was "that she had told me that EDAW had done the survey of that property and that they had recommended avoidance and that she would send me a copy of EDAW's report".

I asked Rebecca Apple if she remembered telling me that the site extended in to the trailer park. Rebecca Apple stated that she did not recall that.

I advised Rebecca Apple that I did not receive a copy of EDAW's report. She answered that she would check with the company to see why not.

I explained what my concern about that conversation was about. I gave her a copy of BBK page 182 and Laylanders E-Mail and asked if she would be willing to put in writing what that phone conversation with me a few years back was. Additionally, I advised her that she should send such a memo that it should be sent to either Viejas Attorney Kimberly Mettler or to Courtney Ann Coyle Attorney, and a copy to me for my records.

Rebecca Apple said she would be happy to do that, and planned to but would have to check with her outfit and reminded me that EDAW is now a big International Company (AECOM), and she is not at liberty to do something with out clearing it first through the Company Mgmt.

Page 182 Reference (h) 3rd paragraph

The Staff Report also states that Ms. Lucas recommended that the site be avoided because the soil characterization at the site indicated a "sacrificial and/or ceremonial area," which is also described in her September 27, 2007 letter. (Staff Report, p.2.) The research and analysis done by archaeologist Micah Hale and John Cook, however, resulted in findings that the site was likely a single family dwelling, or a seasonal habitation, and a place of "foraging and processing activities." (Exhibit M - Archaeological Report dated February 2008, p. 73)

COMMENT:

Upon reviewing enclosure (1) in its entirety I feel that it expresses the sense of my perception upon one day as monitor. Enclosure (1) does not spell out "sacrificial and/or ceremonial area," it does spell out that:

"I have a need to know that all concerned parties have and or will sit at the table and have an honest dialogue about avoidance, impacts, and redesign."

In that letter I also listed five Concerns, and concluded with recommendations:

"It has been one week since I spent one day monitoring DS-S-1, the concerns that I had at the end of that day are still with me. All things considered it is my opinion that DS-S-1 holds a great deal of pre-history information. I have concluded with what I gave witness to that indeed DS-S-1 should be avoided".

COMMENT:

My opinion that the Padre Dam Ridge Hill Road project now identified as SDI-18472 is a "sacrificial and/or ceremonial area," came from the two - three months during January, 2009 through March 2009 being at the site on the ground and touching the soils daily as Native American Monitor. Additionally, I have 74 years being an Indian and much of those 74 years has been living and looking at and working around my own ancestral lands and working at other local lands that I know and understand to hold "sacrificial and/or ceremonial areas." Based on that knowledge and experience I did verbally say that the Padre Dam Ridge Hill project area does hold "sacrificial and/or ceremonial area". (See my Cumulative record of Sacrifice Areas) Dear God that ground and the evidence from the Test Units during Data Recovery unveiled Human Remains, and items of burial goods and the sanctity of place. I expressed those words to JR Cook, Micah Hale, NAHC, Dave Singleton, Members of the KCRC, Virginia Christman, and Padre Dam officials, Al Lou, Mary Lindquist, Neal Brown and perhaps others.

It should be understood that Archeologists and Indians will for ever approach Archeological Testing and Archeological Data Recovery with very different philosophies. I for one find the digging up of burial grounds a spiritual violation of the highest degree.

Micah Hale and John Cook are Archeologists who employee their knowledge as Cultural Resource Managers. (CMR). In San Diego County that simply means they are in

the business of making a living under the guise of Archeology paving the way for development, with very little if any true dedicated research and preservation of our Pre-history peoples, our ancestors. Although the first mitigation under CEQA calls for avoidance, as a Native American Monitor, I have yet to see avoidance with out the help of legal assistance.

Indians have a right and obligation to protect ancestral remains and all that is sacred.

BBK page 52 3rd paragraph last sentence states:

"... and all cultural artifacts at the site, have been treated with the utmost care under the watchful eye of the Native American monitor, Howard Cuero, everyday since construction began. (Exhibit G - Response Letter to Viejas dated 2/25/10.)

COMMENT

I am of the understanding that positive human remains and suspicious bone were found at the site from October 2009 through when the project was stopped in February 2010. As an Indian and a Native American Monitor, I have concerns that the coroner was not being notified, and that only field identifications were made by persons with out qualifications.

Page 52 Paragraph 3, 465

"... The Staff Report states that the Native American monitors Carmen Lucas, Frank Brown, and Clint Linton all agree that the site is a sacred or religious burial site, and that the NAHC states that the fourth monitor, Howard Cuero, did not "offer any comments." (Staff Report, p. 3-4.) In fact, as noted in Mr. Cuero's affidavit, Mr. Cuero was never contacted by NAHC, the Viejas Band of Kumeyaay Indians, ("Viejas"), or the other Native American monitors to share his opinion regarding the site, despite a visit from Dave Singleton at the Project site in January 2010 and a discussion with Mr. Cuero regarding the custody of artifacts. (Exhibit H - Affidavit of Howard Cuero.) Mr. Cuero in fact disagrees with the opinions of the other Native American monitors and feels that the site is a "watering hole" that was used for the purpose of stopping to eat and rest during a journey. In addition, Mr. Cuero noted that he has been present at the Project site every single day of construction and feels that the District's

handling of the site has been excellent, and the District and construction personnel have treated the artifacts and findings with the utmost respect.

Contrary to the positions taken by Viejas and the staff of NAHC, the opinions of archaeologist who have studied the site and Howard Cuero, the Native American Monitor most familiar with the Project site, demonstrate that the findings at the site are not consistent with a cemetery, but rather the dwelling of a single family, a place of "economic activities," based on the artifacts such as ceramics and tools, or a watering hole utilized by migrating peoples. (Exhibit H – Affidavit of Howard Cuero & Exhibit I – data Recovery Report, p. 73)–

COMMENT

I do not know Mr. Cuero; I do not know where he is from, or what his experience is as a Native American Monitor. I can only respond to the above statements by reiterating what I know to be true and that is what I have been taught by my father and that is that in the old days, it was the old women who broke up the cremated remains with the use of hand stones and placed the fragmented cremated remains in ollas. The Ollas were then taken to different places such as the mountains and or desert or lower elevations, sometimes the ollas were placed in rocky areas, not to be disturbed. Sometimes they were placed in small drainages in the desert where the elements eventually caused the ollas to break apart and released the cremated remains to be carried down the drainages and return to the earth, the broken pottery from the Ollas remains scattered across the landscape.

It is not unusual for us to live among the dead. My own burial ground holds my father, my grandmother, my grate grand mother and other ancestors. Cremated remains can be found on the surface in that rich midden soil even today as the gophers and other rodents do their thing. The Bedrock Milling features in the burial grounds continue to give testimony to the living, and a time that was when the first step to our digestive systems was to process Acorn and seeds and the like by braking up and grinding using those old bed rock milling features much like the milling feature that Padre Dam has busted up with dynamite.

I drove by the site one day after the milling feature was busted up. I saw that the ground had all been dug up and what looked like a dozen namus were piled on the busted rock that remained.

When I returned to my ancestral land in 1976, I had taken a 32 foot trailer to live in and unknowingly placed it in the old Karuk area. When my father saw what I had done his

comment to me was "I see you are going to live among the dead. The important thing is that we respect the dead and we do not disturb or dig them up".

CONCLUSION

In conclusion, I would like for the record to be accurate. I am fully aware that what is contained here in becomes part of the public record. After reviewing the submission of Best Best & Krieger, April 5, 2010, I found some areas to be mis-leading. Therefore as Native American Monitor for the period of September 17, 2007, and from January 21 through March 2009, and November 2009 (Border Patrol Dog search) I have tried to record what I know to be true in regards to the Padre Dam District, Ridge Hill Road Project DS-S-1 (SDI-18472).

Please feel free to call me if you have any questions, and please make this letter part of the public record.

Sincerely,

A handwritten signature in black ink, appearing to read "Carmel Lucas", with a long horizontal flourish extending to the right.

CARMEL LUCAS

Kwaaymii, Laguna Band of Indians
Laguna Mountain, California

Exempt from Public Review

DRAFT



Public Dam EIA (Exempt from Public Review)

Archaeological Site Boundary and Project Elements

Photo taken 2007

CARMEN LUCAS

P.O. Box 775
Pine Valley, California 91962

22 September 2007

Don Laylander
Linda Akuz
ASMaffiliates
2034 Corte Del Nogal
Carlsbad, California 92011

- Reference (a) Padre Dam E.S.A. Secondary Connection Cultural Resources
Testing Program Proposal dated 10 July 2007.
(b) Archaeological Testing Plan for Sites DS-S-1 and DS-S-2H
Padre Dam Secondary Connection Project dated September
2007.
(c) Telephone Conversation between Rebecca Apple, of EDAW and
Carmen Lucas, Native American Monitor

- Enclosure (1) Draft Map Padre Dam Archaeological Site Boundary and Project
Element
(2) Native American Monitors Photographs of 17 September 2007
Archaeological Testing

Subject: Native American Observations and Concerns, DS-S-1;
Archeological Testing

Dear Don and Linda,

As you know I was asked to conduct Native American Monitoring Services
for reference (b). I agreed with the understanding that I had a previous comment the
following day and asked that Native American Monitor Clint Linton take over in my
absence.

Three crewmembers and the three of us were on site on 17 September 2007
and did begin conducting Shovel Test Pits (STPs). Although the ground cover
was thick and made ground visibility difficult, I did do a ground survey by moving some

of the grass cover aside. I did see a number of Pot Shards and litchis scattered all the way from the east side of the bedrock milling features to the east as far as the road that runs north and south of the trailer park. The crew was directed to commence placing the STP's near the long bedrock feature. I requested that a STP be placed in the rich midden at the north end of the long bedrock feature. Don Laglander, asked that I make note of any Marine Shell and advise him if I located any while I was conducting my visual survey of the area. I did not see any Marine Shell during that survey, however a few very small fragments were unveiled during the STP process.

As Don and I discussed, how the testing would proceed, I asked who the landowner was and what is the development plan for the land. I was advised that Padre Dam owns the land and that it is planned to build a pump Station and Reservoir on the property. I was also advised that EDAW had conducted the ground Survey. When I asked to see the results of that Survey, I was advised that it was not available as of yet.

Don and I walked to the area that I had requested an STP to be placed, Don showed me the draft map of the proposed plan. Needless to say my concern was immediate when I saw that the pipe trenching is to be placed right were the long bedrock feature is. (On top see enclosure 1). My first inquiry was has anyone discussed a possible redesign and if not then a discussion with the engineers of possible redesign is in order. From behind me, I heard Don say, "We can not save all the bedrock milling feature".

I inquired again about the results of the EDAW survey and I was advised by Don that ASM was working with a Sub-Contractor, who was trying to locate the EDAW report. At this time I advised Don that I planned to call Rebecca Apple at EDAW and ask her for a copy of the EDAW survey results. During the noon hour I did reach Rebecca Apple, who advised me that EDAW did conduct a ground survey of DSS-1 and that ground visibility was difficult however EDAW concluded that the site did indeed go over to and under the road on the east and most likely did continue in to the trailer park area. Rebecca promised that she would locate a copy of that report and send me a copy. I advised both Linda (on Site) and Don (by Phone) of my conversation with Rebecca Apple.

I spent sometime, helping with the sifting of dirt from the STP's, and noted that there is an unusual high amount of potshards. I also noted that the Midden soil is extremely rich with a number of lithic to include obsidian scatter. (See Encl. 2)

The configuration of the major bedrock feature runs approximately 26 feet long by six more or less feet across and is low to the ground. Additionally I noted two very small fragments of burned bone that I set aside with instructions to have Clint Linton who has studied and is studying Human Remains under Dr. Arion T. Mayes of SDSU to look at the bone the next morning and if he was concerned they were to be taken to Rose Tyson of the Museum of Man for identification. Clint did look at those bones and called me to report that he did not have any concerns and was confident that they were not human.

Mary Ellis-Lindquist, SRWA, Right of way Environmental Resources Agent for Padre Dam made a mid-day site visit. Ms. Ellis-Lindquist advised Linda Akguz and myself that the Milling Feature would be moved and or blown up. Mrs. Ellis-Lindquist also stated that JR (President of ASM) had advised her that the two sites across the way were larger. I expressed my concerns for DS-S-1, and again inquired about possible redesign. Ms. Ellis-Lindquist did advise me that the draft map was only a draft, non-the-less I was and I still am of the sense that the design and plan has been chosen and will go forward regardless of the Archeological Test results. If that is true, I find that disturbing and did advise Ms. Ellis-Lindquist that I have a need to know that all concerned parties have and or will sit at the table and have an honest dialogue about avoidance, impacts, and redesign. I also advised Ms. Ellis-Lindquist that I would send her a copy of this report.

Linda told me that a Padre Dam worker had approached her and asked when the Archeologist would be finished? His job was to come in to the area and mow the grass. He took the liberty to tell her that he was a Boy Scout leader and has had the Boy Scouts dig at such sites. I commented that I hope he was not suggesting that he do the same at this site. Linda assured me that she told him that it is not appropriate to have the scouts conduct such activities at this kind of locations. I inquired that if he was going to mow the weeds than why not try to collaborated with Padre Dam to have that work done while the Archeologist were still working on the site that way they could get an honest look at the ground. Later Don said he passed the request on to JR.

The rest of the afternoon I assisted the archeologist with the groundwork of testing. I located a very small itched potshard. (See enclosure 2). As of Monday afternoon 17 September 2007, there had not been any placements of STP's in the Historic Site Area DS-S-2H.

2

A few days later, I received a phone message from Rebecca Apple of EDAW who advised me that EDAW had not completed the survey report for this project, and could not send me a copy at this time. However, Ms. Apple went on to advise me that EDAW had met with the client and advised them that the site went east to include the trailer park, and advised the Client that Avoidance is the appropriate action. The client thanked EDAW and advised that they would hire someone else to do the testing. EDAW has since contacted the Client and advised that EDAW does need to furnish them with a written report.

CONCERNS

1. Testing began without review of the EDAW survey report. If EDAW concluded that the recommendation from the survey has to be Avoidance, then why is ASM testing?
2. If Padre Dam planned to mow the grass why not have it mowed before the Archeology testing began, that would have allowed us to have an honest look at the ground as well as to insure an honest intelligent assessment of the project site as to where to place the STP's and Units.
3. Reference (a), under DSS-1 called for "Up to eight 2-meter wide transects extending out from the bedrock containing milling features will be cleared. Why is it that this procedure was not called for in reference (b)?"
4. How is it that the design for the project was put to paper when the Archeological testing has only just begun, and the results as of this writing are unknown and not available?
5. Has the decision been made to place the project on the site and the milling feature in spite of the advice by EDAW that Avoidance is the appropriate action?

RECOMMENDATION

It has been a week since I spent one day monitoring DSS-1, the concerns that I had at the end of that day are still with me. All things consider it is my opinion that DSS-1 holds a great deal of pre-history information. I have concluded with what I gave witness to that indeed DSS-1 should be avoided.

2007 Test Log #10801 VNA 10-10-07

I hope that these comments are of value to you as you proceed through this CEQA process. Thank you for the opportunity to work with you again. Should you have any questions, please feel free to contact me.

Sincerely,



CARMEN LEICAS
Kwasintzi, Laguna Band Of Indians

Copy to:

Mary Ellis-Lindquist, Padre Dam

Clint Linton, Santa Ynezabel Native American Monitor

Apple

Subj: **Checking In**
Date: 5/14/2010 5:18:04 P.M. Pacific Daylight Time
From: Rebecca.Apple@aecom.com
To: CourtCoyle@aol.com
Hi Courtney,

Carmen had asked if I could provide her with a memo regarding our conversation about the Padre Dam site. Since our attorneys and others are still looking into the situation, I am not allowed to release any information. I did want to let you know that when I can I want to make it clear that I support Carmen.

Rebecca Apple

From: James Gilpin [mailto:James.Gilpin@bbklaw.com]
Sent: Wednesday, May 26, 2010 1:47 PM
To: Kimberly Mettler
Subject: RE: Tolling Agreement

Kim,

As indicated in my May 21, 2010 letter to NAHC, the District is going to proceed with the construction on the Project. The District is proceeding for a multitude of reasons, not the least of which is its inability to reach a resolution with the Viejas Band of Kumeyaay Indians ("Viejas"). On April 29, 2010, we came in good faith to discuss an alternative site arrangement. It was clear from the progression of the meeting that Viejas had already decided what it wanted -- total site avoidance and did not consider the proposed alternative. To date, Viejas has not wavered from its demand for total site avoidance as confirmed in Chairman Barrett's most recent letter to PDMWD President Dan McMillan. As we have made clear, given the additional cost and time delay, total site avoidance is not an acceptable option for PDMWD. As a result, unless Viejas is willing to waiver from its demand for total site avoidance, the parties are at impasse and there is little sense in continued discussions.

We have also been informed that NAHC's inability to reschedule the hearing in May was due in part to the unavailability of Viejas. We have waited for nearly two months for the hearing originally scheduled for April 6th to occur. The hearing process has been plagued by continuing delays due to lack of quorums. We have no guaranty that the hearing will occur.

We have also been told repeatedly by representatives of NAHC that Viejas is their constituent and that ultimately, unless the matter is resolved between the parties, the Commission will side with Viejas. This is hardly the fair hearing one would expect from a State Commission, but nonetheless the District has to date been willing to participate despite the overwhelming appearance of bias. The recent public statements by NAHC have made the fair hearing issue more acute.

Given all the circumstances, the District is going to proceed with construction. District staff will be meeting with the Contractor on Tuesday, June 1, 2010, to proceed with the construction. The District will continue to comply with the demands made by the properly designated MLD, the Kumeyaay Cultural Repatriation Committee ("KCRC"). These measures were agreed to and implemented before Viejas intervened. The District will also continue to retain a Native American monitor onsite to observe and monitor all ground disturbing activities.

The District intends to continue with construction of the Project as originally designed and approved pursuant to Section 5097.98 of the Public Resources Code. The District plans to remove all soil from the core area of the cultural site, defined as CA-SDI-18472 ("Site"), down to the bedrock depth of approximately four feet, and repatriate the soil it to the southwestern corner of the property. Any additional cultural resources or remains found on the property during construction will be repatriated to the area identified. The District will record a document designating the area of repatriation with NAHC and the San Diego County Recorder. The recorded document will include a legal description of the area, the name of the owner of the property, and the owner's acknowledged signature, pursuant to Public Resources Code section 5097.98 subsection (e). We will also move forward with the recommendations made by

KCRC regarding the milling feature. It will be placed as a monument in the area of repatriation. This area will be protected from further disturbance and the District will ensure that the Native American community has access to this area.

At this point the District is unwilling to enter into a tolling agreement, but is willing to continue meaningful settlement discussions with Viejas based upon finding an onsite alternative. If Viejas would like to continue discussions, we proposed involving a professional mediator to facilitate the discussions.

Please let me know if you have any questions.